

Exhibit D

Malotky, Lyle (TSA Calibration) 1/7/2011 10:00:00 AM

1

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 IN RE SEPTEMBER 11 LITIGATION

6 21 MC 101 (AKH)

7 -----X

8 MARY BAVIS,

9 Plaintiff,

10 -against- 02 Civ. 7154

11 UAL CORPORATION, et al.,

12 Defendants.

13 -----X

14 HIGHLY CONFIDENTIAL

15 January 7, 2011

10:00 a.m.

16

17

18 Videotaped Deposition of

19 LYLE MALOTKY Ph.D., taken by Defendants,

20 pursuant to Notice, at the Park Hyatt Hotel, 1201

21 24th at M Street NW, Washington, DC, before

22 TAMMEY M. PASTOR, a Registered Professional

23 Reporter, Certified LiveNote Reporter and Notary

24 Public within and for the State of New York.

25

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2 effectiveness of anticipated improvements to
3 the physical architecture, new equipment, rules
4 and procedures."

5 Do you see that?

6 A. Yes.

7 Q. And it says that's against a 1999
8 baseline and two, five year intervals,
9 2004-2009.

10 What I would like to ask you just
11 to start with is in your capacity as scientific
12 advisor, having been involved in metal
13 detectors, was it the FAA's role to assess
14 equipment to see how effective that equipment
15 could be against the perceived threat to
16 aviation?

17 MS. SCHIAVO: Objection.

18 A. Yes.

19 Q. And you mentioned that you did
20 periodic reviews of the system with respect to
21 the perceived threat; is that correct?

22 A. Yes.

23 Q. And would those reviews include
24 reviewing the effectiveness of metal detectors
25 used at checkpoints at airports?

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2 A. Yes.

3 Q. And did those reviews factor in
4 what the perceived threat would be at any
5 particular time?

6 A. Yes.

7 Q. If you would turn to 12840 which
8 is page 1 under the Executive Summary. I refer
9 you to the first line on the third paragraph.
10 Which says "The TAAS takes a threat driven
11 approach."

12 Do you see that?

13 MS. VARGAS: You have to answer
14 verbally.

15 A. Yes. Sorry.

16 Q. And can you explain what that
17 means?

18 A. Threat driven is really driven by
19 several different factors. That is the ability
20 of the terrorists to actually accomplish the
21 event. The amount of damage done to the United
22 States, economic and personal injuries and
23 death. And the desire, the compatibility of
24 the outcome of the event with the terrorist
25 goals.

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2 blades, prison guards will routinely have body
3 cavity searches just to make sure no one is
4 carrying something even if they went through a
5 metal detector?

6 MS. SCHIAVO: Objection.

7 MR. COHEN: Objection.

8 MS. VARGAS: Objection. I think
9 whether or not prisons have body cavity
10 searches is beyond Mr. Malotky's
11 expertise.

12 MR. ELLIS: I am not so sure.

13 Q. In any event, can you tell us how
14 the calibration setting was made for
15 magnetometers, do you know -- well, what's your
16 earliest knowledge of how magnetometers or
17 walk-through metal detectors were calibrated as
18 part of the aviation security system? Do you
19 know how they were originally calibrated or do
20 you come in at some point later on?

21 MS. SCHIAVO: Objection.

22 MR. COHEN: Objection.

23 MS. VARGAS: Objection to form.

24 You can answer.

25 A. When I came to FAA security in

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2 1984 there were metal detectors which were
3 already deployed. And they were calibrated
4 with a couple specific handguns, that is that
5 these handguns would need to be detected when
6 our agents passed them through.

7 In about 1989 or '90, I think it
8 was 1990, in response to the Undetectable
9 Firearms Act and advances in metal detector
10 technology, FAA elected to make the metal
11 detector standard more difficult, more
12 aggressive.

13 We had received a lot of
14 Congressional interest in undetectable
15 handguns. The law, the Undetectable Firearms
16 Act gave us a specific baseline, that is it
17 specified that Bureau of ATF would look at any
18 handguns to be sold in the United States and
19 they must be as detectable as this specific

20 22 revolver. So
21 anything less detectable than that, plastic
22 guns, ceramic guns or whatever could not
23 legally be sold in the United States.

24 When FAA developed our standard,
25 working with the folks in Atlantic City, we

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2 identified three different handguns made out of
3 difficult to detect material, that is not
4 steel, at the sort of the small end of their
5 design class. So, that I was very active in
6 that testing and making those decisions.

7 Q. So in 1990, did the FAA come up
8 with a metal detection standard that would be
9 more sensitive to different types and lesser
10 amount of metal?

11 MS. SCHIAVO: Objection.

12 MS. VARGAS: Objection to form.

13 MR. COHEN: Objection.

14 A. Yes.

15 MR. ELLIS: One second.

16 VIDEOGRAPHER: Going off the record
17 at 10:53 a.m.

18 (Recess taken.)

19 (SSI Exhibit 50 for
20 identification, Memo dated 5/29/90,
21 production numbers TSA 11681.)

22 VIDEOGRAPHER: We are back on the
23 record at 10:56 a.m. This marks the
24 beginning of tape number 2.

25 EXAMINATION CONDUCTED BY MR. ELLIS:

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2 you will, is going to be different probably

3 with every metal detector in the fleet because

4 what you have to set the metal detector at

5 specifically is driven in part by your local

6 environment.

7 This is why we require that the

8 systems be recalibrated by an FAA agent every

9 time they are moved.

10

11

12

13 So, the way we did this was it

14 was a performance standard, that is we said you

15 must detect these specific weapons at a

16 specific level of performance when passed

17 through the arch at a variety of positions on

18 the body.

19 Q. I am going to show you, we are

20 going to have marked as SSI Exhibit 51 a

21 document you will be handed.

22 (SSI Exhibit 51 for

23 identification, Metal Detector

24 Calibration/Approval Procedures for Course

25 00032, production numbers TSA 24426

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2 through 28.)

3 Q. Do you see that document that's

4 in front of you that's marked SSI Exhibit 51

5 entitled Metal Detector Calibration/Approval

6 Procedures For Course Number 00032? Can you

7 identify what that document would be,

8 Dr. Malotky?

9 A. Yes. This is training materials

10 which we would use to train all of the new FAA

11 agents as they became agents.

12 Q. And the FAA agents, what role did

13 they play with respect to the deployment and

14 use of metal detectors in the Civil Aviation

15 Security system?

16 MS. SCHIAVO: Objection.

17 MS. VARGAS: Object to the form.

18 You can answer.

19 A. The metal detectors were owned by

20 the air carriers or their agents. The metal

21 detectors would be calibrated by an FAA agent

22 walking through the metal detector the number

23 of times specified. And then attaching a file

24 sticker and engraving the minimum level that,

25 the minimum setting and the program and date of

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2 that calibration.

3 Q. And did the FAA also certify what

4 types of metal detectors could be used by

5 airlines or airports?

6 MS. SCHIAVO: Objection.

7 A. Yes.

8 Q. And after they certified the

9 types equipment that could be used, the FAA

10 would then calibrate that equipment in the

11 location where it was going to be used, using

12 this test; am I correct?

13 A. Yes.

14 Q. The one that's identified in SSI

15 Exhibit 51; correct?

16 MS. SCHIAVO: Objection.

17 MR. COHEN: Objection.

18 A. Yes.

19 Q. And on page 2 of this guidance

20 material to FAA agents, on the top of that page

21 it states "These three weapons and the OTP have

22 been selected to directly address the terrorist

23 threat aimed at the civil aviation community."

24 Do you see that?

25 A. Yes.

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2 Q. And do you agree with that
3 statement or was that your understanding of how
4 the calibration level was established?

5 MS. SCHIAVO: Objection.

6 A. Yes.

7 Q. And at that time the threat that
8 was being addressed was primarily the threat
9 from the use of guns; am I correct?

10 MS. SCHIAVO: Objection.

11 MS. VARGAS: Objection. You can
12 answer.

13 A. Yes.

14 Q. And at any time from the time
15 that calibration was established in 1990, to
16 September 11, 2001, was the standard for
17 calibrating and using metal detectors ever
18 changed?

19 MS. SCHIAVO: Objection.

20 A. No.

21 Q. And that equipment and its use
22 and calibration, however, would have been
23 reevaluated every time you went through one of
24 your threat cycles or periodic assessments; am
25 I correct?

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2 A. She.

3 Q. Sorry. She.

4 A. She was one of the technologists
5 in the policy division.

6 Q. Did you work with her?

7 A. Yes.

8 Q. Do you agree with the statements
9 she makes in this document?

10 MS. SCHIAVO: Objection.

11 MR. COHEN: Objection.

12 MS. VARGAS: Can you specify which
13 statements, please.

14 Q. All of the statements.

15 MS. SCHIAVO: Objection.

16 A. Yes.

17 Q. I am going to show you another
18 document that is I guess SSI Exhibit 56.

19 (SSI Exhibit 56 for
20 identification, FAA Position on Box
21 Cutters, production numbers TSA 11524.)

22 MR. ELLIS: Mary?

23 MS. SCHIAVO: Got it.

24 Q. The calibration standard that was
25 establish by the FAA in 1990 and is still in

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2 effect on September 11, 2001, that standard was
3 geared to detect test objects that had the
4 metal content of particular handguns; am I
5 correct?

6 MS. SCHIAVO: Objection.

7 A. That's correct.

8 Q. That standard was not geared to
9 detect things like box cutters; is that
10 correct?

11 MS. SCHIAVO: Objection.

12 MR. COHEN: Objection.

13 MS. VARGAS: Objection. You can
14 answer.

15 A. That's correct.

16 Q. And in front of you you have a
17 document that's been marked as SSI Exhibit 56.

18 A. Yes.

19 Q. Does that document indicate that
20 prior to 9/11 the FAA security program for air
21 carriers did not prohibit carrying box cutters
22 or similar cutting instruments on passenger
23 flights; is that correct?

24 A. Yes.

25 MS. SCHIAVO: Objection.

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2 MS. VARGAS: Excuse me, do you mean
3 it is correct that's what it indicates?

4 MR. ELLIS: Yes.

5 A. Yes.

6 Q. Were you ever advised prior to
7 September 11 that box cutters should be
8 considered a security threat and the equipment
9 should be attempted to be calibrated at a level
10 to detect them?

11 MS. SCHIAVO: Objection.

12 MR. COHEN: Objection.

13 MS. VARGAS: Objection to the form.
14 You can answer.

15 A. No.

16 Q. As far as you're aware, was
17 anyone at the FAA told to consider box cutters
18 a threat item prior to September 11, 2001 and
19 to have any of the layers of the security
20 system intended to detect and confiscate same?

21 MS. SCHIAVO: Objection.

22 MS. VARGAS: Objection. You can
23 answer.

24 A. I don't know what any one
25 individual in FAA could have been told.